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Hon. Timothy W. Dore  
Chapter: 7  
Location: Seattle  
Hearing Date: July 26, 2019  
Hearing Time: 9:30 a.m.

Attorneys for Wapato Entities

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:

EL-LO-WEE CONDOMINIUM  
ASSOCIATION,

Debtor.

Case No. 19-10026-TWD

**WRIGHT-WAPATO'S REPLY IN  
SUPPORT OF OBJECTION TO  
CLAIM NOS. 1, 2, 4-61, 66, 68-76**

**I. INTRODUCTION**

None of the time-share unit sublessees (collectively, the “**Claimants**”) who filed proofs of claim oppose Wright-Wapato’s objection. Instead, curiously, the debtor demurred. A Chapter 7 debtor lacks standing to defend one set of claims against an objection by a different creditor.<sup>1</sup> Moreover, the debtor’s argument supports—rather than opposes—Wright-Wapato’s objection. The debtor insists the Claimants have an equity-type interest in the estate’s assets. While equity-interest holders may file proofs of interest, only creditors may file proofs of claim. At most, the Claimants are equity. Their proofs of claim are invalid as a matter of law. The Court should disallow Claim Nos. 1, 2, 4-61, 66, and 68-76 (collectively, the “**Claims**”).

<sup>1</sup> This odd situation also raises questions about the use of estate resources and conflicts of interest. Wright-Wapato reserves the right to object to any fee application by debtor’s counsel for work associated with the debtor’s brief.

REPLY IN SUPPORT OF OBJECTION TO  
CLAIM NO. 1, 2, 4-61, 66, AND 68-76 - 1

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## II. AUTHORITY AND ARGUMENT

### A. The debtor lacks standing to defend the Claims.

As an initial matter, the debtor has no standing to defend the Claims. Standing is limited to parties “directly and adversely affected pecuniarily by an order of the bankruptcy court.” *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442 (9th Cir. 1983). Based on this principle, Chapter 7 debtors ordinarily lack standing in the claims-adjudication process because the resolution of claims objections does “not diminish the debtor’s property, increase [its] burdens, or detrimentally affect [its] rights.” *Id.* Courts recognize two exceptions to this rule: (1) where disallowance would yield a surplus and “give the chapter 7 debtor a pecuniary interest;” or (2) where a claim would not be dischargeable. *In re Wellman*, 378 B.R. 416 (B.A.P. 9th Cir. 2007); *In re Cherne*, 514 B.R. 616, 621 (Bankr. D. Idaho 2014). Both exceptions recognize that in these narrow circumstances, the debtor has something to gain from objecting.

There is no conceivable pecuniary benefit from *defending* a set of purported claims against an objection by a competing creditor. Indeed, the debtor here has acted against its own interests by advocating for a larger pool of unsecured creditors. The debtor’s response is odd to say the least. Ultimately, the debtor simply lacks standing to demur to Wright-Wapato’s claim objection.

### B. Equity-interest holders are not entitled to file proofs of claim.

The debtor’s substantive argument is equally unavailing. The Bankruptcy Code is clear that only a “creditor or an indenture trustee may file a proof of claim.” 11 U.S.C. § 501(a). The debtor insists have an ownership interest in the underlying real property:

Claimants must be considered unit owners who own a fractional share of [Wright-Wapato’s] leasehold interest in the Property; the objection mischaracterizes Claimants as Time Share Owners. Claimants are really fractional owners of the condominium units.

(Debtor’s Resp., ECF Dkt #48, at 2). The distinction on which the debtor focuses is irrelevant here; what matters is that the debtor agrees the Claimants’ interests are an equity-ownership

1 interest. The debtor confirms this view later, when it agrees asserts that the Claimants are entitled  
2 to a pro rata share of whatever assets remain after creditors are paid:

3 Claimants are entitled to disbursement after Debtor's genuine creditors  
4 have been provided for.

5 (*Id.* at 3). In support of these arguments, the debtor cites RCW 64.34.268(6), which explicitly bars  
6 distributions to unit owners until creditors have been paid:

7 Following termination of the condominium, the proceeds of any sale of  
8 real property, together with the assets of the association, are held by the  
9 association as trustee for unit owners and holders of liens on the units  
and creditors of the association as their interests may appear. **No such  
proceeds or assets may be disbursed to the owners until all of the  
creditors of the association have been paid or provided for.**

10 (emphasis added). In pressing this point, the debtor concedes the Claimants are something other  
11 than "genuine creditors." The debtor is correct in this regard. The Claimants are not creditors;  
12 they are equity. "An equity security holder may file a proof of interest." 11 U.S.C. § 501(a). Their  
13 proofs of claim, however, should be disallowed.

### 14 III. CONCLUSION

15 The Court should disallow Claim Nos. 1, 2, 4-61, 66, and 68-76. None of the Claimants  
16 opposed Wright-Wapato's claim objection. The debtor has no standing to defend the Claims, and  
17 the debtor's opposition brief concedes the Claimants have an equity-type interest in the estate.

18 DATED this 23<sup>rd</sup> day of July, 2019.

19 HILLIS CLARK MARTIN & PETERSON P.S.

20  
21 By /s/ Amit D. Ranade

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